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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,883	11/09/2001	Mel MacAllister	mac11081	5936
23580	7590	02/26/2004	EXAMINER	
MESMER & DELEAULT, PLLC 41 BROOK STREET MANCHESTER, NH 03104			POE, MICHAEL I	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/050,883	MACALLISTER ET AL.
	Examiner	Art Unit
	Michael I Poe	1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09 November 2001.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) 12-17 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-11 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 09 November 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>20020601</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It was not executed in accordance with either 37 CFR 1.66 or 1.68.

Specifically, although both applicants have executed the declaration filed on June 4, 2002, the execution is improper because it was not dated by one of the applicants, specifically Sonia Fogg.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11, drawn to an animal molding kit, classified in class 54, subclass 44.1.
 - II. Claims 12-17, drawn to a method of using a moldable kit for taking an impression of a predefined area of an animal, classified in class 264, subclass 222.

3. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product as claimed can be used in a materially different process of using that product such as a process wherein sheet is formed to the contours of the animal after heating without pressing the sheet against the animal (e.g., the heat sheet is placed on the animal and it self-deforms to the shape of the animal by the force of gravity due to the softened condition of the sheet).

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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5. During a telephone conversation with applicant's attorney Robert Deleault on January 20, 2004, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-11.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,340,067 (Martin et al.).

Claims 1 and 3

Martin et al. teach a kit 22 for customizing a computer mouse accessory 22 for supporting the hand and wrist for an individual user (an animal molding kit) including a partially pre-formed, but customizable to match a specific hand and mouse, mold 24 made of well-known modeling clay; a lubricating substance 26 such as household mineral oil; a flat sheet of moldable material 28 such as a low-temperature thermoplastic (e.g., Polyflex II) (said moldable material is one of an elastomer-based material, an epoxy-based material or a polyurethane foam resin-based material) that is heated, draped and folded over the mold 24 (a sheet of moldable material sized to take an impression of a predetermined area on said animal); and explicit training instructions 30 (instructions for handling, heating and using said

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sheet of moldable material) (column 3, lines 10-21; column 5, line 43 - column 6, line 22). Note that the flat sheet in the kit of Martin et al. takes in an impression of the hand and wrist (i.e., a predefined area) of a human (i.e., an animal) indirectly from the mold 24 that has been customized to have an impression or shape of the hand and wrist of a desired user. Note further that, although not required by the claims as currently written, the flat sheet in the kit of Martin et al. would be capable of being molded directly on a predefined area of animal as is known in the art.

Claim Rejections - 35 USC § 103

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,340,067 (Martin et al.) in view of U.S. Patent No. 5,643,513 (Searle).

Claim 2

The discussion of Martin et al. as applied to claim 1 above applies herein.

Martin et al. do not specifically teach that the kit contains a pair of gloves. However, Searle teaches a kit for making a shell-type seat used in high-performance vehicles (a molding kit) including a plurality of molding materials and a pair of disposable gloves for preventing skin contact with the molding materials (said kit further comprising a pair of gloves) (column 3, lines 56-60; column 5, line 60 - column 6, line 15; column 8, lines 31-44). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide a pair of gloves in the kit of Martin et al. as taught by Searle to prevent skin contact during molding of the flat sheet in the process of Martin et al. thereby assuring the hands of the person doing the molding were not burned or hurt during the hand molding process of Martin et al.

10. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,340,067 (Martin et al.) in view of U.S. Patent No. 6,071,445 (Wagner).

Claims 4 and 5

The discussion of Martin et al. as applied to claim 1 above applies herein.

Martin et al. do not specifically teach that the molding sheet is provide with indicia for aligning the molding sheet and that the instructions further including indicia aligning instructions. However, Wagner teaches a process for forming plastics including cutting a plastic piece (a sheet of moldable material) from

a sheet; heating both sides of the plastic piece by contact heating; molding the heated plastic piece into its end-shape by press-molding, and cooling the heated and molded plastic piece into its end shape by air cooling means wherein the plastic piece includes a center mark 61 on its center for correctly positioning or centering the plastic piece in the press-molding step (said molding sheet has indicia for aligning said molding sheet with said predefined area) (column 3, lines 25-46; column 7, lines 3-14). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide centering indicia in the kit of Martin et al. as taught by Wagner to assure that the flat sheet was properly and accurately positioned on the form thereby providing a more accurately molded impression. Note that the instructions in the kit of Martin et al. as modified by Wagner would have obviously included instructions for providing proper aligning the flat sheet to thereby assure accurate molding.

11. Claims 6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,340,067 (Martin et al.) in view of U.S. Patent No. 3,835,621 (Gorenschek).

Claims 6 and 11

Martin et al. teach a kit 22 for customizing a computer mouse accessory 22 for supporting the hand and wrist for an individual user (a molding kit) including a partially pre-formed, but customizable to match a specific hand and mouse, mold 24 made of well-known modeling clay; a lubricating substance 26 such as household mineral oil; a flat sheet of moldable material 28 such as a low-temperature thermoplastic (e.g., Polyflex II) (said moldable material is one of an elastomer-based material, an epoxy-based material or a polyurethane foam resin-based material) that is heated, draped and folded over the mold 24 (a sheet of moldable material sized to take an impression); and explicit training instructions 30 (instructions for handling, heating and using said sheet of moldable material to make said impression) (column 3, lines 10-21; column 5, line 43 - column 6, line 22). Note that the flat sheet in the kit of Martin et al. takes in an impression of the hand and wrist (i.e., a predefined area) of a human (i.e., an animal) indirectly from the mold 24 that has been customized to have an impression or shape of the hand and wrist of a desired user. Note further that, although no required by the claims as currently written, the flat sheet in the kit of Martin et al. would be capable of being molded directly on a predefined area of animal as is known in the art.

Martin et al. do not specifically teach that the kit could be used for form a saddle for a horse. However, Gorenschek teaches a method for forming a saddle including laying fiberglass cloth over reusable forms having the desired shape of a plurality of saddletree members (e.g., pommel-like means 14, seat member 25 and sidebars 34); impregnating the cloth (a sheet of moldable material) with fiberglass resin and catalyst; laying additional layers of fiberglass cloth over the resin impregnated layer; repeating the cloth-resin sequence until the desired thicknesses of the saddletree members are achieved to form the saddletree members; attaching appropriate leathers and padding to the saddletree members by stitching; and assembling a saddle conforming to the undulating shape of a horse's back and withers (sized to fit an area of a horse's back and withers sufficient to take an impression of said area for making a fitted saddle) from the saddletree members (column 5, lines 22-45; column 6, lines 13-40). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to use the molding kit of Martin et al. to mold saddletree members for a saddle over a form having the shape of a horse's back and withers from a sheet of moldable material as taught by Gorenschek to provide a do-it-yourself saddle molding kit for making a saddle that required little knowledge and skill.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,340,067 (Martin et al.) in view of U.S. Patent No. 3,835,621 (Gorenschek) and U.S. Patent No. 5,643,513 (Searle).

Claim 7

The discussion of Martin et al. and Gorenschek as applied to claim 6 above applies herein.

Martin et al. in view of Gorenschek do not specifically teach that the kit contains a pair of gloves. However, Searle teaches a kit for making a shell-type seat used in high-performance vehicles (a molding kit) including a plurality of molding materials and a pair of disposable gloves for preventing skin contact with the molding materials (said kit further comprising a pair of gloves) (column 3, lines 56-60; column 5, line 60 - column 6, line 15; column 8, lines 31-44). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide a pair of gloves in the kit of Martin et al. in view of Gorenschek as taught by Searle to prevent skin contact during molding of the flat sheet in the process of Martin et al. in view of

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Gorenschek thereby assuring the hands of the person doing the molding were not burned or hurt during the hand molding process of Martin et al. in view of Gorenschek.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,340,067 (Martin et al.) in view of U.S. Patent No. 3,835,621 (Gorenschek) and U.S. Patent No. 5,662,942 (Kim).

Claim 8

The discussion of Martin et al. and Gorenschek as applied to claim 6 above applies herein.

Martin et al. in view of Gorenschek do not specifically teach that the instructions including a list of saddle makers capable of receiving the impression for making a fitted saddle. However, Kim teaches a kit for obtaining fingerprint impressions including instructions 24 which describe the contents of the kit 10 and the method of using the kit 10 to obtain fingerprint impression 28 and which indicate whom and to what address one should forward fingerprint impression 28 to obtain the three-dimensional fingerprint replication (a list of makers capable of receiving said impression) (column 4, lines 14-19). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide a list of saddle makers capable of making a saddle from the saddletree members formed by the kit of Martin et al. in view of Gorenschek as part of the instructions as taught by Kim to assist the do-it-yourself user of the kit in obtaining a professionally made saddle based upon the saddletree members formed by the do-it-yourself kit of Martin et al. in view of Gorenschek.

14. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,340,067 (Martin et al.) in view of U.S. Patent No. 3,835,621 (Gorenschek) and U.S. Patent No. 6,071,445 (Wagner).

Claims 9 and 10

The discussion of Martin et al. and Gorenschek as applied to claim 6 above applies herein.

Martin et al. in view of Gorenschek do not specifically teach that the molding sheet is provide with indicia for aligning the molding sheet and that the instructions further including indicia aligning instructions. However, Wagner teaches a process for forming plastics including cutting a plastic piece (a sheet of moldable material) from a sheet; heating both sides of the plastic piece by contact heating; molding the heated plastic piece into its end-shape by press-molding, and cooling the heated and molded

plastic piece into its end shape by air cooling means wherein the plastic piece includes a center mark 61 on its center for correctly positioning or centering the plastic piece in the press-molding step (said molding sheet has indicia for aligning said molding sheet) (column 3, lines 25-46; column 7, lines 3-14). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide centering indicia in the kit of Martin et al. in view of Gorensczek as taught by Wagner to assure that the flat sheet was properly and accurately positioned on the form thereby providing a more accurately molded impression. Note that the instructions in the kit of Martin et al. in view of Gorensczek as modified by Wagner would have obviously included instructions for providing proper aligning the flat sheet to thereby assure accurate molding.

15. Claims 6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,589,467 B2 (Buitenwerf et al.) in view of U.S. Patent No. 5,340,067 (Martin et al.).

Claims 6 and 9-11

Buitenwerf et al. teach a kit for making an individual saddle form for a horse or equine 22 for use in producing customized saddle (a saddle molding kit; for making a fitted saddle) including a flat tray with insulation of a size to hold a thermoplastic sheet and a thermoplastic sheet (a sheet of moldable material) that is heated through various methods, applied while heated to the back and withers of the horse or equine 22 (sized to fit an area of a horse's back and withers), shaped by applying hand pressure, and cooled with cool water to set the sheet in its closely molded shape corresponding to an impression of the back and withers of the horse or equine 22 (sufficient to take an impression of said area) (column 1, lines 8-22; column 2, lines 3-50). Buitenwerf et al. further teach that the sheet is applied across the back and withers of the horse or equine 22 where the saddle would most comfortably fit using a center line 21' to center the sheet on the back (said sheet of moldable material includes indicia for aligning said molding sheet over said horse's back and withers) (column 3, lines 7-19).

Buitenwerf et al. do not specifically teach that the kit includes instructions for handling, heating and using the thermoplastic sheet to make the impression and that the thermoplastic material is one of an elastomer-based material, an epoxy-based material or a polyurethane foam resin-based material. However, Martin et al. teach a kit 22 for customizing a computer mouse accessory 22 for supporting the hand and wrist for an individual user (an animal molding kit) including a partially pre-formed, but

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customizable to match a specific hand and mouse, mold 24 made of well-known modeling clay; a lubricating substance 26 such as household mineral oil; a flat sheet of moldable material 28 such as a low-temperature thermoplastic (e.g., Polyflex II) (said moldable material is one of an elastomer-based material, an epoxy-based material or a polyurethane foam resin-based material) that is heated, draped and folded over the mold 24 (a sheet of moldable material sized to take an impression of a predetermined area on said animal); and explicit training instructions 30 (instructions for handling, heating and using said sheet of moldable material to make said impression) (column 3, lines 10-21; column 5, line 43 - column 6, line 22). Note that the flat sheet in the kit of Martin et al. takes in an impression of the hand and wrist (i.e., a predefined area) of a human (i.e., an animal) indirectly from the mold 24 that has been customized to have an impression or shape of the hand and wrist of a desired user. It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide instructions in the kit of Buitenwerf et al. as taught by Martin et al. to assure that the kit could be used by anyone regardless of knowledge and skill. It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to use Polyflex II as the thermoplastic material in the kit of Buitenwerf et al. as taught by Martin et al. to provide a material that could safely be heated and applied directly to the back of the horse without injuring the horse. Note that the instructions in the kit of Buitenwerf et al. in view of Martin et al. would have obviously included instructions for providing proper aligning the thermoplastic sheet to thereby assure accurate molding.

16. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,589,467 B2 (Buitenwerf et al.) in view of U.S. Patent No. 5,340,067 (Martin et al.) and U.S. Patent No. 5,643,513 (Searle).

Claim 7

The discussion of Buitenwerf et al. and Martin et al. as applied to claim 6 above applies herein.

Buitenwerf et al. in view of Martin et al. do not specifically teach that the kit contains a pair of gloves. However, Searle teaches a kit for making a shell-type seat used in high-performance vehicles (a molding kit) including a plurality of molding materials and a pair of disposable gloves for preventing skin contact with the molding materials (said kit further comprising a pair of gloves) (column 3, lines 56-60;

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column 5, line 60 - column 6, line 15; column 8, lines 31-44). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide a pair of gloves in the kit of Buitenwerf et al. in view of Martin et al. as taught by Searle to prevent skin contact during molding of the flat sheet in the process of Buitenwerf et al. in view of Martin et al. thereby assuring the hands of the person doing the molding were not burned or hurt during the hand molding process of Buitenwerf et al. in view of Martin et al.

17. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over 6,589,467 B2 (Buitenwerf et al.) in view of U.S. Patent No. 5,340,067 (Martin et al.) and U.S. Patent No. 5,662,942 (Kim).

Claim 8

The discussion of Buitenwerf et al. and Martin et al. as applied to claim 6 above applies herein.

Buitenwerf et al. in view of Martin et al. do not specifically teach that the instructions including a list of saddle makers capable of receiving the impression for making a fitted saddle. However, Kim teaches a kit for obtaining fingerprint impressions including instructions 24 which describe the contents of the kit 10 and the method of using the kit 10 to obtain fingerprint impression 28 and which indicate whom and to what address one should forward fingerprint impression 28 to obtain the three-dimensional fingerprint replication (a list of makers capable of receiving said impression) (column 4, lines 14-19). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made and one of ordinary skill would have been motivated to provide a list of saddle makers capable of making a saddle from the saddletree members formed by the kit of Buitenwerf et al. in view of Martin et al. as part of the instructions as taught by Kim to assist the do-it-yourself user of the kit in obtaining a professionally made saddle based upon the saddletree members formed by the do-it-yourself kit of Buitenwerf et al. in view of Martin et al.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 2,147,455 (Murray), U.S. Patent No. 3,048,169 (Pierce), U.S. Patent No. 3,793,768 (Surving), U.S. Patent No. 3,819,796 (Webster et al.), U.S. Patent No. 3,907,107 (Vercollone), U.S. Patent No. 4,559,189 (Wegener, II), U.S. Patent No. 6,237,294 B1 (Rygiel), U.S. Patent No. 6,615,568 B1

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(Roskies), U.S. Patent Publication No. 2003/0051447 A1 (Bruce), U.S. Patent Publication No. 2003/0221328 A1 (Ferrand) and Great Britain Patent No. 1,384,062 A (Goedicke) have been cited of interest to show the state of the art at the time the invention was made.

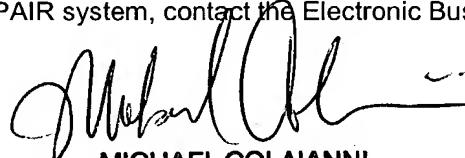
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael I Poe whose telephone number is (571) 272-1207. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Poe/mip



MICHAEL COLAIANNI
PRIMARY EXAMINER